

[ORAL ARGUMENT NOT SCHEDULED]
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMITTEE ON OVERSIGHT AND
REFORM OF THE UNITED STATES
HOUSE OF REPRESENTATIVES,

Plaintiff-Appellant,

v.

WILLIAM BARR, in his official capacity as
Attorney General of the United States,

Defendant-Appellee.

No. 16-5078

MOTION FOR VOLUNTARY DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Appellate Procedure 42(b), appellant the Committee on Oversight and Reform of the U.S. House of Representatives respectfully moves to voluntarily dismiss its appeal in the above-captioned matter with prejudice. The parties have reached a settlement agreement, and this motion is made pursuant to ¶ 3 of that agreement. *See* Settlement Agreement ¶ 3 (attached as Exhibit A).

The parties began settlement negotiations in January 2017, during the 115th Congress. *See* Mot. to Hold Appeal in Abeyance at 2 (Jan. 13, 2017). Settlement discussions continued throughout 2017. *See* Joint Status Reports (May 15, June 15,

July 17, Aug. 16, Sept. 18, Oct. 19, Nov. 20, and Dec. 20, 2017). On March 7, 2018, the parties signed a conditional settlement agreement conditioned on the District Court's vacatur of certain of its rulings on remand and, pursuant to that agreement, filed a motion for an indicative ruling in the District Court. *See* Joint Status Report at 2 (Mar. 28, 2018). On October 22, 2018, the District Court issued an indicative ruling stating that it would not vacate the rulings at issue on remand. *See* Joint Status Report at 2 (Nov. 2, 2018).

Following a lapse in appropriations for the Department of Justice and the election of the Honorable Elijah E. Cummings as Chairman of the Committee on Oversight and Reform of the 116th Congress, the parties resumed settlement negotiations in early February 2019. *See* Joint Status Report (Feb. 7, 2019). The parties informed this Court on April 4, 2019, that they had "made substantial progress towards a negotiated solution." Joint Status Report (Apr. 4, 2019). These negotiations culminated in the attached settlement agreement, which was executed on April 10, 2019.

The settlement agreement resolves the dispute between the parties at issue in this case. In addition, the agreement provides that each party shall bear its own costs. *See* Settlement Agreement ¶ 4. Because there is no longer a dispute that requires the Court's resolution, the Committee moves to voluntarily dismiss this appeal pursuant to Rule 42(b).

CONCLUSION

For the foregoing reasons, the Court should grant the Committee's motion for voluntary dismissal with prejudice.

Respectfully submitted,

/s/ Todd B. Tatelman

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May 8, 2019

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and type-volume requirements of Federal Rule of Appellate Procedure 27(d) because it was prepared with using Microsoft Word with Times New Roman 14-point font and contains 357 words.

/s/ Todd B. Tatelman

Todd B. Tatelman

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2019, I filed the foregoing document via the U.S. Court of Appeals for the District of Columbia Circuit's CM/ECF system, which I understand caused service on all registered parties.

/s/ Todd B. Tatelman

Todd B. Tatelman

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EXHIBIT A

Settlement Agreement

This Settlement Agreement (the “Agreement”) is entered into as of the last date set forth below by and between the Committee on Oversight and Reform of the United States House of Representatives (the “Committee”) and the Honorable William P. Barr, in his official capacity as Attorney General of the United States (the “Department”).

WHEREAS, the Committee is the appellant and the Department is the appellee in an appeal pending in the United States Court of Appeals for the D.C. Circuit (the “Court of Appeals”), styled *Committee on Oversight and Government Reform of the United States House of Representatives v. Barr*, No. 16-5078 (D.C. Cir.) (the “Appeal”), arising out of litigation commenced by the Committee against the Department in the United States District Court for the District of Columbia (the “District Court”), styled *Committee on Oversight and Government Reform of the United States House of Representatives v. Barr*, No. 1:12-cv-01332-ABJ (the “Lawsuit”); and

WHEREAS, the Committee and the Department (collectively, the “Parties”) now desire to attempt to resolve amicably the matters in controversy between them in the Lawsuit giving rise to this Appeal;


NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. The Parties recognize that the Committee continues to disagree with portions of the District Court’s orders of August 20, 2014, and January 19, 2016, including its conclusion that the deliberative process privileged may be asserted against Congress. The Parties agree that because subsequent developments have obviated the need to resolve those issues in an appeal in this case, the District Court’s holdings should not in any way control the resolution of the same or similar issues should they arise in other litigation between the Committee and the Executive Branch, and hereby waive any right to argue that the judgment of the District Court or any of the District Court’s orders or opinions in this case have any preclusive effect in any other litigation.
2. The Parties recognize that the Executive Branch of the United States Government (“Executive Branch”) continues to disagree with some of the District Court’s holdings, including its conclusion that the Committee had standing and a cause of action to bring this suit. The Parties agree that because subsequent developments have obviated the need to resolve those issues in an appeal in this case, the District Court’s holdings should not in any way control the resolution of the same or similar issues should they arise in other litigation between the Committee and the Executive Branch, and hereby waive any right to argue that the judgment of the District Court or any of the District Court’s orders or opinions in this case have any preclusive effect in any other litigation.
3. The Committee will take all necessary steps to voluntarily dismiss its appeal with prejudice in *Committee on Oversight and Government Reform of the United States House of Representatives v. Barr*, No. 16-5078 (D.C. Cir.), marking the termination of all civil litigation between the parties arising out of the complaint filed by the Committee in

Committee on Oversight and Government Reform of the United States House of Representatives v. Barr, No. 1:12-cv-01332-ABJ.

4. Fees and Costs. The Parties will bear their own costs, fees, and expenses relating to the Lawsuit and the Appeal.
5. Representations. By signing this Agreement, each attorney represents that his or her client(s) agree with all the terms of this Agreement and that he or she has the authority to sign on behalf of his or her client(s). The Parties agree that this Agreement is fully binding on them and their successors.
6. Jointly Drafted Agreement. This Agreement shall be considered a jointly drafted agreement and shall not be construed against any party as the drafter.
7. Execution in Counterparts and Electronic Signatures. This Agreement may be executed and delivered in counterparts, and may be executed by electronic signature, and if so, shall be considered an original. Each counterpart, when executed, shall be considered one and the same instrument, which shall comprise the Agreement, which takes effect on the date of execution by all parties to the Agreement.
8. Other. This Agreement, consisting of three pages, fully and completely expresses the entire understanding among the Parties on the subject matter hereof and no statement, remark, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced. This Agreement cannot be modified or amended except by an instrument in writing, agreed to and signed by the Parties, nor shall any provision hereof be waived other than by a written waiver, signed by the Parties.

FOR THE COMMITTEE:




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Executed this 9th day of April, 2019, in Washington, D.C.
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Executed this 9th day of April, 2019, in Washington, D.C.